

## Gaining a Foothold in the Soviet Market: How to Establish a Representative Office<sup>†</sup>

In the view of many Western companies, the Soviet Union presents enormous opportunities to develop a vast new market. The Soviets have demonstrated an almost insatiable appetite for Western products and the USSR has abundant undeveloped natural resources. The problem is how to profit from these opportunities. To date, the Soviet Government's track record on encouraging foreign investment is disappointing. Investment in joint ventures—by far the most common arrangement—is low, due to supply problems, currency restrictions, excessive bureaucratic meddling, and the overall climate of instability. Access to the market has become more difficult because of the dramatic rate at which top-level decisionmaking has been decentralized and the resulting confusion over lines of authority. Notwithstanding these present difficulties, many companies have decided that now is the time to establish a beachhead in the Soviet marketplace in order to acquire the knowledge and hands-on experience necessary to take advantage of business opportunities as they arise.

For many years, the only officially permitted means for a foreign company to establish a direct presence<sup>1</sup> in the USSR has been through a process known as

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†The information contained in this article is current as of November 5, 1990. The reader is cautioned that changes in the law are likely, given the accelerating pace of legal and political change in the USSR today.

The Editorial Reviewer for this article was Linda S. Foreman.

1. This article does not discuss the establishment of an indirect presence through participation by a foreign company in a Soviet joint venture pursuant to joint venture laws and decrees enacted since 1987. The original enactment, which has been amended and supplemented on several occasions, is set forth in USSR Council of Ministers Decree No. 427, dated Jan. 13, 1987, "On the Establishment in the Territory of the USSR and Operation of Joint Ventures with the Participation of

"accreditation," pursuant to which a company is granted the right to open a representative office in the USSR.<sup>2</sup> Until recently, accreditation was usually granted only to foreign firms having a substantial prior commercial history with Soviet organizations; it was not usually available to new entrants to the Soviet market. Essentially, the Soviet authorities viewed accreditation as the culmination of an extended and mutually productive commercial relationship that justified the establishment of a representative office of the foreign firm to enable it to expand its business to greater levels. Reflecting this restrictive approach, accreditation has traditionally been a long and cumbersome process. Although the application requirements have not been overly complex, the Soviet authorities have frequently requested additional information from applicants, and it has not been unusual for the accreditation process to last one or two years before the authorities reached a decision.<sup>3</sup>

To a great extent, these difficulties can be attributed to the political realities of the cold war, the historical dominance of the Soviet Communist Party's policies over the rule of law, and the xenophobic nature of former Soviet regimes. The byzantine Soviet bureaucracy further compounded these political obstacles. Today, however, the political situation in the USSR is undergoing tumultuous and fundamental changes as the country struggles to shed its totalitarian past and move toward democracy. There is a sense of urgency bordering on desperation over the need to rescue the moribund economy from decades of mismanagement in order to avoid serious social unrest. The central government has recently made an attempt to deal with the economic crisis by submitting to the USSR Supreme Soviet a plan entitled "Guidelines for Stabilizing the National Economy and

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Soviet and Foreign Organizations and Firms from Capitalist and Developing Countries." In addition, companies are often present in the USSR to fulfill contractual obligations, which is permitted by the Soviet authorities without specific legislative support.

2. On October 26, 1990, President Gorbachev exercised certain emergency powers previously granted to him by the USSR Supreme Soviet and adopted "Decree of the President of the Union of Soviet Socialist Republics on Foreign Investments in the USSR." This decree appears to allow the establishment by foreign businesses of wholly owned subsidiaries in the Soviet Union, to permit foreign investors to acquire ownership interests in Soviet enterprises, and to permit foreigners to hold land use rights, including long-term lease rights. The decree is very brief (less than two pages long) and most details about how it will be implemented remain unclear.

On the same day, President Gorbachev issued a second decree entitled "On the Introduction of a Commercial Rate of the Ruble vis-à-vis Foreign Currencies and Measures for the Creation of a Union-Wide Currency Market." This decree establishes a new exchange rate of 1.8 rubles to U.S. \$1.00 for trade and investment transactions, and authorizes all Soviet enterprises to participate in ruble-hard currency auctions as of January 1, 1991. Details concerning the implementation of this one-page decree are also unclear at present.

3. In the past, the application generally consisted of basic corporate documents, evidence of financial status, and a description of the applicant's business and commercial links with Soviet organizations. This remains true under the New Regulations, *infra* note 7. However, published laws and regulations do not always tell the entire story. In the USSR, there frequently exist "secret," unpublished rules that must be followed as well. With respect to accreditation, the internal approvals required are not publicly known, but it is commonly understood that a variety of Soviet organizations, including security organizations, participate in the review of the accreditation application.

Moving toward a Market Economy.’’<sup>4</sup> The plan offers only general guidelines to be considered by the Republics in formulating their own economic programs; the real effect of the plan will only become clear once specific implementing legislation is adopted. Although many observers, including the radical president of the Russian Republic, Boris Yeltsin,<sup>5</sup> and two of Mr. Gorbachev’s top economic advisers, Nikolai Y. Petrakov and Stanislav S. Shatalin,<sup>6</sup> have predicted that the plan is doomed to failure, the plan nevertheless clearly embraces the concept of a free market with a role for foreign investment.

In this environment, old attitudes toward foreign business are rapidly improving as the authorities recognize the need for foreign management expertise, technology, and financing. This new attitude is reflected in a number of measures taken recently by the Soviet authorities. Of primary interest to a foreign company interested in establishing a representative office in the USSR are the new rules on accreditation (the New Regulations),<sup>7</sup> which repealed previous accreditation regulations that had been in effect with minor modifications since 1977 (the 1977 Regulations).<sup>8</sup> In addition, several provisions contained in the Agreement on Trade Relations between the United States and the Soviet Union (the Trade Agreement),<sup>9</sup> signed by Presidents Bush and Gorbachev on June 1, 1990, would further streamline the opening and operation of representative offices of American companies if and when the Trade Agreement takes effect.<sup>10</sup> The New Regulations would most likely be amended or replaced to conform to the Trade Agreement prior to its entry into force.

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4. *Izvestia*, Oct. 17, 1990, at 1, col. 1. The “Guidelines” represent a compromise between the so-called “500 days” plan for transition to a free market economy sponsored by the distinguished Soviet economist, Stanislav S. Shatalin, and a more cautious plan retaining significant state involvement in the market sponsored by USSR Prime Minister Nikolai I. Ryzhkov.

5. *Id.* at 2, col. 2.

6. *N.Y. Times*, Nov. 5, 1990, at A8, col. 5.

7. USSR Council of Ministers Decree No. 1074, dated Nov. 30, 1989, “On Approval of the Statute on the Procedure for the Opening and Activity in the USSR of Representative Offices of Foreign Firms, Banks and Organizations,” Collection of Decrees of the USSR, 1990, No. 1, Article 8 [hereinafter *New Regulations*]. For a translation of the Decree, see Appendix.

8. USSR Council of Ministers Decree No. 427, dated May 23, 1977, “On Approval of the Statute on the Procedure for Opening and Activity in the USSR of Foreign Firms, Banks and Organizations,” Collection of Decrees of the USSR, 1977, No. 16, Article 95, as amended by USSR Council of Ministers Decree No. 17, dated Jan. 7, 1987, Collection of Decrees of the USSR, 1987, No. 7, Article 32 [hereinafter *1977 Regulations*].

9. Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics, June 1, 1990, 29 I.L.M. 946 (1990) [hereinafter *Trade Agreement*].

10. Aside from provisions relating to representative offices, the Trade Agreement covers several other key trade issues, including the grant of most-favored-nation status to the USSR. From the U.S. standpoint, the Trade Agreement will not become effective until ratification by the Senate and a presidential waiver of the Jackson-Vanik Amendment to the Trade Act of 1974, 19 U.S.C. § 2432 (1988). The Jackson-Vanik Amendment prohibits the granting of most-favored-nation status to countries with nonmarket economies that restrict emigration, including the USSR. However, the amendment provides for a presidential waiver of this prohibition upon certain conditions, chiefly the receipt of assurances that such restrictive emigration policies will be discontinued.

Foreign companies should also bear in mind that the Soviet legal system is currently in a state of upheaval. The same political and economic forces that gave rise to the New Regulations and the Trade Agreement have resulted in conflicts between the central Soviet Government and newly assertive Union Republic governments over fundamental constitutional issues. Many of the Republics, including the vast and economically powerful Russian Republic, have already declared "sovereignty," while three Republics (Lithuania, Estonia, and Georgia) have declared their independence. A key element of most of these declarations has been the supremacy of Republic-level laws over Union-level laws. President Gorbachev has attempted to assuage restive Republics by calling for a new Union Treaty to delineate the relative rights and powers of the Soviet and Republican governments. However, at least a dozen draft treaties have been put forward by various groups, and a quick resolution of this problem is not expected. Consequently, foreign companies considering the establishment of a representative office in the USSR should inquire about any applicable Republic-level regulations during the application process.

This article describes the major provisions of the New Regulations and, where relevant, highlights changes from the 1977 Regulations. Provisions of the Trade Agreement that would take precedence over the New Regulations are described in the appropriate sections. For ease of reference, an unofficial English translation of the New Regulations is attached as an appendix.

## I. General

The New Regulations do not grant a foreign company the absolute right to open a representative office once the application requirements have been fulfilled. Instead, the New Regulations follow the approach of the 1977 Regulations by vesting the relevant accrediting bodies with broad discretion as to whether to approve or disapprove a particular application. Nonetheless, preliminary indications suggest that the Soviet authorities are indeed serious about streamlining the traditionally long and frustrating accreditation process. The authors are aware of at least one Western company that was granted accreditation in 1990 within sixty days of submitting its application. In addition, Soviet officials who were informally approached for their views on the subject believe that the New Regulations will continue to be administered with a view to expediting the accreditation process. However, it is still too early to tell whether the New Regulations will, in the short run, significantly relieve the logjam of foreign companies currently waiting for accreditation.

One of the main purposes of the Trade Agreement is to help break this logjam. The Trade Agreement would require equitable, nondiscriminatory treatment of representative offices of companies and organizations of each nation, with respect to both the opening and the operation of such offices.<sup>11</sup> Significantly, it

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11. Trade Agreement, *supra* note 9, art. V, §§ 1, 2.

would require a centralized accrediting authority (rather than the multiple authorities currently in existence—see section III below) to exercise its best efforts to act on applications within sixty days of their submission. It would further require the accreditation procedure to be administered with a goal of maximizing market participation, not only by companies already operating in that market, but by new entrants and small companies as well.<sup>12</sup> The Trade Agreement also targets the frustrating Soviet practice of keeping secret laws and regulations on commercial activity.<sup>13</sup> Article VI, section 1 of the Trade Agreement requires both nations to make available publicly on a timely basis all laws and regulations related to commercial activity.

## II. Organizations Eligible for Accreditation

Section 2 of the New Regulations states that permission to open a representative office may be granted to foreign firms<sup>14</sup> with which Soviet organizations are interested in cooperating, with priority given to the following:

[a] firms which are well-known in their home countries and in the international market, have proved themselves good partners in cooperation with Soviet organizations in different spheres, have signed with Soviet organizations large scale commercial agreements or other types of agreements which have a considerable impact on the Soviet economy, and have large commodity turnovers with their Soviet partners;

[b] firms involved in industrial cooperation with Soviet enterprises and organizations, as well as chambers of commerce, associations and unions of businessmen interested in developing trade and economic relations with the USSR; and

[c] firms which have signed significant agreements on scientific, technical and other kinds of cooperation with appropriate Soviet organizations.

Section 2 also provides that accreditation may be granted on the basis of treaties signed by the USSR with foreign governments, such as the Trade Agreement.

While any foreign company may submit an application for accreditation, the very general language of these provisions offers little objective guidance as to how they will be applied in practice. Nonetheless, an analysis of some of the changes from the 1977 Regulations indicates an intent to broaden the availability of accreditation.

Potentially the most significant change is contained in the introductory clause of section 2. This clause previously read "permission to open representative offices may be granted to the following foreign firms," implying that firms which

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12. *Id.*

13. See *supra* note 3.

14. Section 1 defines the term "foreign firm" (*inofirma*) as a foreign firm (*firma*), bank (*bank*), or organization (*organizatsiya*). Despite the lack of precision, this definition should be interpreted broadly. The word *firma* in Russian is loosely used to refer to any entity that engages in business, whether or not it is incorporated. The words *bank* and *organizatsiya* are equivalent in meaning to their English cognates. While the word *bank* should give rise to few interpretive problems, it is clear that the word *organizatsiya* in this definition is used as a general category to cover entities that might not be covered by the terms *firma* and *bank*.

did not meet the authorities' interpretations of the above criteria were not eligible for accreditation. The New Regulations expand this to provide that permission may be granted to foreign firms "with which Soviet organizations are interested in cooperating, and first and foremost" to those listed in items [a]–[c] above. The implication of this revision is that any foreign firm which demonstrates that Soviet organizations are interested in cooperating with it, or whose application is sponsored by a Soviet organization, is eligible for accreditation, with preference being accorded to those companies meeting the authorities' interpretation of items [a]–[c] above. Consequently, it appears possible, at least in theory, for a foreign company having no previous business dealings with Soviet organizations to obtain accreditation.

The other major revision to section 2 is the addition in item [b] above of chambers of commerce, associations, and unions of businessmen interested in developing trade and economic relations with the USSR. This addition again reflects a desire on the part of the Soviet authorities to encourage foreign businesses with no prior Soviet experience to establish a presence in the USSR on a collective basis for the purpose of developing business contacts with their Soviet counterparts.

Foreign companies should also note that Soviet authorities often require the parent company to apply for accreditation in its own name, even in cases where the parent company wishes to operate the representative office through a subsidiary for tax and liability reasons. In the past, it has been possible to negotiate an acceptable arrangement where the parent receives accreditation in name only, while the subsidiary actually opens the representative office (see section V. below).

As mentioned above, the Trade Agreement would require the USSR to make accreditation available to new entrants to the market as well as small companies.<sup>15</sup>

### III. Soviet Organizations Authorized to Grant Accreditation

Section 1 of the New Regulations sets forth a list of "accrediting bodies" empowered to grant accreditation status to foreign firms. Under the 1977 Regulations, Soviet organizations authorized to grant accreditation to foreign companies included the Ministry of Foreign Trade (now the Ministry of Foreign Economic Relations), the USSR State Committee on Science and Technology, the USSR Ministry of Civil Aviation, the USSR Ministry of Merchant Marine, the USSR Ministry of Fisheries, the USSR State Bank, the USSR State Committee for Foreign Tourism, and other ministries and departments of the USSR duly empowered in the established procedure.<sup>16</sup> The New Regulations amend this list by (a) deleting the USSR State Committee of Foreign Tourism and "other

15. Trade Agreement, *supra* note 9, art. V, § 1.

16. 1977 Regulations, *supra* note 8, § 1.

ministries and departments of the USSR duly empowered in the established procedure," and (b) adding the USSR Chamber of Commerce and Industry (the Chamber of Commerce), the Councils of Ministers of the Union Republics, and "at the instruction of the latter, ministries and departments of the Union Republics."<sup>17</sup> These revisions, and specifically the addition of organizations of the Union Republics, represent a significant step toward decentralization of the accreditation process. It is reasonable to expect that the more progressive Republics, as well as those that are interested in attracting foreign investment, will be eager to encourage the establishment of representative offices and will accordingly give a liberal interpretation to the New Regulations.

The New Regulations contain no nationality, industry, or other categories specifying the accrediting bodies to which particular types of companies must apply: any foreign company can approach any accrediting body. Historically, most foreign companies wishing to establish representative offices have had contacts with Soviet organizations, which have selected the accrediting body. In practice, the Ministry of Foreign Economic Relations and the USSR State Committee on Science and Technology most frequently act as the accrediting body for foreign commercial entities.

The Trade Agreement would override the above provisions by requiring accreditation for American companies to be handled by a single, central accrediting authority. It is not known whether the Soviets intend to create a new agency or designate an existing agency to undertake this responsibility.

#### **IV. Purposes for Which Representative Offices May Be Opened**

Section 3 of the New Regulations sets forth in rather general terms the following purposes for which a foreign firm may open a representative office in the USSR:

[a] actively facilitating the realization of agreements on cooperation in the fields of trade, the economy, finance, science and technology, transportation, tourism and other spheres, investigating possibilities for further developing, intensifying and improving different forms of such cooperation, as well as expanding the exchange of economic, commercial and scientific and technological information and developing trade and economic relations with Soviet organizations;

[b] fulfilling commercial and other kinds of transactions, as well as actively assisting Soviet organizations in developing the export of machinery, equipment and other goods and services, assisting Soviet organizations in getting to know the latest achievements in international technology, and promoting importation by Soviet organizations of modern machinery and equipment and assisting in their upkeep and maintenance.

An important change from the 1977 Regulations is the addition of "developing trade and economic relations with Soviet organizations" mentioned in item [a] above. Unlike many of the other enumerated purposes, which require the

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17. New Regulations, *supra* note 7, § 1.

existence of ongoing projects with Soviet organizations prior to the opening of the representative office, this new language implies that an office may be opened for the development of business by companies that are not yet involved in concrete projects.

In contrast to the 1977 Regulations, section 1 of the New Regulations permits a representative office to open branch offices in the USSR with the approval of the relevant accrediting body. This section also permits several foreign firms to open a single joint representative office. Section 10 of the New Regulations provides additional flexibility by expressly permitting the established representative office of one foreign firm to undertake the representation of the interests of other foreign firms with the approval of the relevant accrediting body, on condition that it file the required financial reports with the Ministry of Finance regarding such activity. These provisions, none of which was contained in the 1977 Regulations, represent an effort by the Soviet authorities to make it easier for foreign firms to establish a presence in the USSR.

## V. Tax Consequences of Accreditation

In 1990, Soviet tax laws were radically overhauled, including laws governing the taxation of foreign companies (the Company Tax Law)<sup>18</sup> and individuals (the Personal Tax Law).<sup>19</sup> The discussion below should be qualified by noting that virtually no regulations have yet been adopted to clarify how the rather general language of the Company Tax Law and the Personal Tax Law is to be interpreted and applied in concrete situations; accordingly, many ambiguities and interpretive questions cannot be resolved at this time.

Pursuant to the Company Tax Law, tax is imposed at a rate of 30 percent<sup>20</sup> on income derived by a foreign legal entity operating through its permanent representative office in the USSR, on the continental shelf, or in the USSR's "economic zone."<sup>21</sup> The term "permanent representative office" is defined broadly, and includes arrangements whereby an organization or individual represents the

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18. USSR Law on Taxation of Enterprises, Associations and Organizations, adopted by resolution of the USSR Supreme Soviet, dated June 14, 1990 [hereinafter Company Tax Law]. The adopting resolution stipulates that the law is to become effective as of January 1, 1991, except for certain sections, not generally relevant to foreign representative offices, which became effective on July 1, 1990.

19. USSR Law on Taxation of the Incomes of Soviet Citizens, Foreign Citizens and Stateless Persons, adopted by resolution of the USSR Supreme Soviet, dated Apr. 23, 1990 [hereinafter Personal Tax Law]. The adopting resolution provides for an effective date of July 1, 1990, except for a few minor provisions not relevant to foreign nationals, which are to become effective as of January 1, 1991.

20. The previously applicable tax rate was 40 percent. See section 1 of Decree of the USSR Supreme Soviet No. 313, dated May 12, 1978, "On Income Tax Levied on Foreign Legal Entities and Individuals."

21. Company Tax Law, *supra* note 18, ch. 2, arts. 9, 10. The law offers no guidance as to what is meant by the phrase "economic zone."



foreign legal entity in the USSR.<sup>22</sup> In light of the broad definition and lack of explanatory regulations, it is unclear, in the absence of an applicable tax treaty, what degree of activity by the representative office would be necessary to create a sufficient jurisdictional nexus for imposition of the income tax.

Many foreign companies will be able to rely on tax treaties to avoid this uncertainty and, in addition, to reduce or eliminate Soviet tax on the income of their representative office. The USSR has signed treaties with a number of Western countries, including the United States,<sup>23</sup> Austria,<sup>24</sup> Belgium,<sup>25</sup> Canada,<sup>26</sup> Denmark,<sup>27</sup> the Federal Republic of Germany,<sup>28</sup> Finland,<sup>29</sup> France,<sup>30</sup> Italy,<sup>31</sup> the Netherlands,<sup>32</sup> Norway,<sup>33</sup> Spain,<sup>34</sup> Sweden,<sup>35</sup> Switzerland,<sup>36</sup> and the United Kingdom.<sup>37</sup> These treaties generally provide that income of a company organized under the laws of one nation signatory to the treaty will be subject to taxation by the other nation only if such income is derived through a "permanent establishment" of the foreign company in such other nation. These treaties normally contain a safe harbor definition of the term "permanent establish-

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22. Company Tax Law *supra* note 18, ch. 2, art. 9, defines permanent representative office as any bureau, office, agency or other place of operation (related to the development of natural resources, the performance, pursuant to a contract, of construction, installation, assembly, adjustment and maintenance of equipment, and other similar activities), as well as organizations and individuals representing foreign legal entities in the territory of the USSR.

23. Convention on Matters of Taxation, June 20, 1973, United States-USSR, 27 U.S.T. 1, T.I.A.S. No. 8225 (the U.S. Treaty).

24. Income Tax Treaty, Apr. 10, 1981, Austria-USSR, C-1 European Taxation No. 5, May 1985 (the Austrian Treaty).

25. Income Tax Treaty, Dec. 17, 1987, Belgium-USSR, C-2 European Taxation No. 4, Apr. 1990 (the Belgian Treaty).

26. Income Tax Treaty, June 13, 1985, Canada-USSR, C-10 European Taxation No. 12, Dec. 1986 (the Canadian Treaty).

27. Income Tax Treaty, Oct. 21, 1986, Denmark-USSR, C-3 European Taxation No. 5, May 1988 (the Danish Treaty).

28. Income Tax Treaty, Nov. 24, 1981, Germany-USSR, C-5 European Taxation No. 7, July 1988 (the Germany Treaty).

29. Income Tax Treaty, Oct. 6, 1987, Finland-USSR, C-3 European Taxation No. 9, Sept. 1988 (the Finnish Treaty).

30. Income Tax Treaty, Oct. 4, 1985, France-USSR, C-4 European Taxation No. 9, Sept. 1987 (the French Treaty).

31. Income Tax Treaty, Feb. 26, 1985, Italy-USSR, C-6 European Taxation No. 12, Dec. 1989 (the Italian Treaty).

32. Income Tax Treaty, Nov. 21, 1986, Netherlands-USSR, C-7 European Taxation No. 12, Dec. 1987 (the Dutch Treaty).

33. Income Tax Treaty, Feb. 15, 1980, Norway-USSR, C-8 European Taxation No. 7, July 1988 (the Norwegian Treaty).

34. Income Tax Treaty, Mar. 1, 1985, Spain-USSR, C-9 European Taxation No. 11, Nov. 1987 (the Spanish Treaty).

35. Income Tax Treaty, Oct. 13, 1981, Sweden-USSR, C-9 European Taxation No. 1, Jan. 1985 (the Swedish Treaty).

36. Income Tax Treaty, Sept. 5, 1986, Switzerland-USSR, C-9 European Taxation No. 11, Nov. 1988 (the Swiss Treaty).

37. Income Tax Treaty, July 31, 1985, United Kingdom-USSR, C-10 European Taxation No. 5, May 1986 (the U.K. Treaty).

ment," which gives guidance as to what activities will cause a foreign representative office to be deemed a permanent establishment—and thus subject to taxation—and those activities that may be undertaken without triggering taxation.<sup>38</sup> For example, pursuant to the U.S. Treaty, activities conducted by U.S. companies consisting of "advertising . . . the collection or dissemination of information . . . the conducting of scientific research or similar activities which have a preparatory or auxiliary character" are not subject to tax in the USSR.<sup>39</sup> Generally, however, a U.S. company will be subject to taxation in the USSR if its representative office has authority to conclude contracts on its behalf and habitually exercises such authority in the USSR.<sup>40</sup>

In the absence of a treaty, or if the foreign company for whatever reason wishes its representative office to undertake activities that would cause it to be deemed a permanent establishment subject to Soviet taxation, it is currently possible to negotiate a tax ruling from the USSR Ministry of Finance to limit Soviet tax exposure. Such rulings take the form of a letter to the foreign company from the Ministry of Finance and are generally based on a notional calculation of taxable profit equal to 15 percent of the costs incurred by the representative office in Moscow in connection with its income-producing activities. The income tax is then assessed against this notional profit. Such arrangements with the Ministry of Finance are commonly referred to as "cost-plus" rulings.

Such cost-plus rulings are issued on an ad hoc basis: there are no publicly available regulations specifically authorizing the Ministry of Finance to issue such rulings, nor does there exist a publicly available compendium of such rulings on which a foreign company could rely as precedent. However, the Company Tax Law expressly provides that if it is "impossible to determine" the profit of a foreign representative office, a cost-plus ruling may be issued assessing tax at 15 percent of notional profit based either on gross income or expenses incurred, subject to the approval of the tax agencies of the Union Republic where the permanent representative office is located.<sup>41</sup> This provision appears to codify the existing, informal practice of the Ministry of Finance, with two significant caveats. First, as of January 1, 1991, it will be necessary to deal with two tax

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38. See U.S. Treaty, *supra* note 23, art. IV, § 1; Austrian Treaty, *supra* note 24, art. 5, § 1; Belgian Treaty, *supra* note 25, art. 5, § 1; Canadian Treaty, *supra* note 26, art. 6, § 1; Danish Treaty, *supra* note 27, art. 5, § 1; Dutch Treaty, *supra* note 32, art. 5, § 1; Finnish Treaty, *supra* note 29, art. 5, § 1; French Treaty, *supra* note 30, art. 4, § 1; German Treaty, *supra* note 28, art. 5, § 1; Italian Treaty, *supra* note 31, art. 4, § 1; Norwegian Treaty, *supra* note 33, art. 4, § 1; Spanish Treaty, *supra* note 34, art. 5, § 1; Swedish Treaty, *supra* note 35, art. 4, § 1; Swiss Treaty, *supra* note 36, art. 4, § 1; U.K. Treaty, *supra* note 37, art. 6, § 1. Several of these treaties use differing terminology (e.g., the U.S. Treaty, *supra* note 23, art. IV, § 2, refers to a "representation" as opposed to a "permanent establishment"), and the scope of activities which may be undertaken without being taxed in the USSR varies from treaty to treaty.

39. U.S. Treaty, *supra* note 23, art. III, § 2(d).

40. This is true because the U.S. Treaty does not explicitly exempt such activity from taxation.

41. Company Tax Law, *supra* note 18, ch. 2, art. 10. This provision becomes effective as of January 1, 1991.

authorities, the USSR Ministry of Finance and the relevant Republic-level tax agency. Secondly, rulings will only be available if profit is "impossible to determine," a standard not defined in the law and capable of varying interpretation.

Taxes are assessed annually by "tax agencies of the location of the foreign legal entity's permanent representative office."<sup>42</sup> The representative office is required to register with such tax agencies within one month after commencement of its activities; failure to register is deemed a concealment of income and subjects the representative office to penalties.<sup>43</sup> The amount collected is allocated among the Soviet-, Republic-, and local-level taxing authorities, with the Soviet authorities receiving 50 percent of the revenues, and the relevant Republic and local authorities sharing the remaining 50 percent.<sup>44</sup>

In order to take advantage of a favorable tax treaty or to limit potential liability for operations in the USSR, many companies elect to use a separate subsidiary to open and operate the foreign representative office. For example, the U.S. Treaty does not specifically authorize a U.S. taxpayer to take a credit on its U.S. taxes for Soviet taxes paid in connection with the activity of a USSR representative office. Such credits may be available to some extent under U.S. domestic tax law, but there have been no Internal Revenue Service rulings on such questions, and the state of the law is even more unclear in light of the complete restructuring of Soviet tax law effected by the Company Tax Law. In this situation, many American companies might prefer to operate their USSR representative office through a subsidiary organized in a jurisdiction with a treaty providing for credits and deductions for tax paid in the USSR.<sup>45</sup>

Despite the potential benefits to a foreign company of operating a representative office through a subsidiary, in the authors' experience Soviet accrediting bodies often refuse to deal with subsidiaries and demand that the parent company itself apply for accreditation. These Soviet organizations are frequently not familiar with the common Western practice of using subsidiaries for tax planning, limitation of liability, and other purposes, and prefer to deal directly with the parent company out of concern that a subsidiary may not be as permanent as the parent. Moreover, as a matter of protocol, high-level government organizations acting as accrediting bodies may also feel that dealing with a subsidiary is demeaning.

Sometimes it is possible to solve this problem by having the parent company apply for accreditation itself and obtaining a ruling from the Ministry of Finance

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42. *Id.* ch. 2, art. 13, § 1.

43. *Id.* ch. 2, art. 9, and ch. 9, art. 37.

44. *Id.* ch. 2, art. 11 and ch. 1, art. 5, § 2.

45. These countries include Belgium, Canada, the Federal Republic of Germany, Finland, Italy, the Netherlands, Spain and the United Kingdom. See Belgian Treaty, *supra* note 25, art. 14; Canadian Treaty, *supra* note 26, art. 17; Dutch Treaty, *supra* note 32, art. 18; Finnish Treaty, *supra* note 29, art. 14; German Treaty, *supra* note 28, art. 19; Italian Treaty, *supra* note 31, art. 12; Spanish Treaty, *supra* note 34, art. 16; and U.K. Treaty, *supra* note 37, art. 20.

setting forth its agreement to permit the parent company to operate the representative office through a designated subsidiary. The ruling should confirm that the parent company will not be subject to Soviet tax. In the authors' experience the Ministry, as a condition to issuing such a ruling, requires the parent company to confirm on an annual basis that it is not engaged in commercial activity in the USSR. The ruling should also confirm how the subsidiary will be taxed, which depends on how the subsidiary intends to operate the representative office. If it is to be operated as a permanent establishment—and, thus, subject to Soviet tax—it may be appropriate to request a cost-plus ruling. If not, then the ruling should confirm that the representative office will not be subject to Soviet tax, based on the relevant treaty definition of "permanent establishment." As is the case with cost-plus rulings described above, these types of arrangements are based on the existing practice of the Ministry of Finance developed on an ad hoc basis, and no relevant regulations or lists of rulings are publicly available.

As a final note on the taxation of foreign legal entities, the Company Tax Law provides for several new taxes in addition to income tax. For example, chapter 3 imposes a turnover tax on the difference between wholesale and retail prices of goods produced in the USSR. However, the applicable tax rate and the conditions for imposition of the tax have not yet been specified; these matters are to be decided by the USSR Council of Ministers in a separate decree. Other taxes include a tax on income from shares and securities, a withholding tax on dividends, interest, copyright, and license royalties and leasehold payments, and a gambling tax.<sup>46</sup>

The Personal Tax Law has completely changed the basis for taxation of foreign individuals. Prior to July 1, 1990, tax was generally assessed on the earned income of foreign individuals at a rate not exceeding 13 percent.<sup>47</sup> Because so few deductions were available, the tax was assessed essentially against gross income. It was common for such tax to be paid in foreign exchange, although it was possible for the tax to be paid in rubles. The Personal Tax Law introduces a graduated income tax system under which most foreigners resident in the USSR as representatives of foreign firms will fall into a 60 percent marginal bracket.<sup>48</sup> The Personal Tax Law purports to tax all income received by a foreign citizen resident in the USSR for at least 183 days in a calendar year, whether paid in cash or in kind and whether paid in the USSR or outside the USSR.<sup>49</sup> There are as yet few clearly developed deductions.<sup>50</sup>

46. Company Tax Law, *supra* note 18, ch. 7.

47. See M. NEWCITY, *TAXATION IN THE SOVIET UNION* 215 (1986).

48. Personal Tax Law, *supra* note 19, ch. 2, art. 8. This article speaks in terms of monthly rather than annual income, and imposes a marginal rate of 60 percent on income exceeding 3,000 rubles a month, equivalent to approximately U.S. \$4,800 per month at the official exchange rate of 1 ruble to U.S. \$1.60. *But see supra* note 2 and *infra* note 51.

49. *Id.* ch. 1, art. 2, § 1.

50. Charitable deductions are the only deductions that are likely to be relevant to foreign nationals. *See id.* § 2(b).

Because foreign companies customarily offer hardship allowances, cost of living adjustments, and tax equalization packages to their foreign executives resident in the USSR, the enactment of the Personal Tax Law carries the potential for a substantial increase in the cost of doing business in the USSR for foreign companies. However, two mitigating factors should be kept in mind. First, it continues to be possible to remit tax in rubles. Accordingly, the foreign executive could purchase rubles at the current tourist rate of approximately six rubles to U.S. \$1.00, instead of the official exchange rate of approximately one rouble to U.S. \$1.60, and pay personal taxes in cash.<sup>51</sup> The effect of this tenfold decrease means that the personal tax rate becomes, in effect, 6 percent. However, this loophole in the payment system is likely to be eliminated if the Soviet authorities determine that they are thereby losing too much potential hard currency revenue. Secondly, the personal income tax situation of a given foreign executive may be affected by a tax treaty, if any, between the USSR and the country of the executive's domicile.

## VI. Duration of Accredited Status

Section 4 of the New Regulations provides that a representative office may be established for a period necessary to achieve the purposes set forth in section 3, with the qualification that such period should generally not exceed three years. The corresponding section of the 1977 Regulations provided for a two-year duration.<sup>52</sup> Section 4 further provides that this period can be extended upon timely application by the foreign firm with the relevant accrediting body, provided that the goals of the representative office have not been "completely achieved" and such extension "is deemed appropriate."

Despite the implication in this section that accreditation is a short-term proposition, it is rare for the Soviet authorities to refuse to renew the term. In fact, over twenty American companies have maintained accredited offices in Moscow since the middle of the 1970s (and, in some cases, much longer).<sup>53</sup>

## VII. Application Procedure

Section 5 sets forth the procedures for the application to establish a representative office. The foreign firm must pay a fee (which in practice has been nominal) and file with its accrediting body a written application setting forth the proposed purpose of the representative office, a description of its activities, and

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51. A third exchange rate of 1.8 rubles to U.S. \$1.00 was introduced for trade and investment purposes by a presidential decree dated October 26, 1990 (*see supra* note 2). However, it is not yet clear whether this new commercial rate or the old official rate will be used for purposes of determining tax liability of foreign individuals whose income is denominated in foreign exchange.

52. 1977 Regulations, *supra* note 8, § 4.

53. Companies with long established representative offices in the USSR include Dresser Industries, DuPont, General Electric, Honeywell, Monsanto, and Occidental Petroleum.

detailed information on business cooperation with Soviet organizations. The information on business cooperation must include a description of existing agreements and commercial transactions, and state the purpose and duration of the transactions, as well as the sums involved. The application should also contain a description of prospects for future business cooperation. There is no prescribed form of application. In practice, it usually takes the form of a letter from the applicant to the accrediting body containing the above information.

The supporting documentation, which should be filed along with the application, is relatively simple. The foreign company or bank must submit an extract from the commercial register of its jurisdiction (in the case of U.S. corporations, certified copies of the articles of incorporation and bylaws are required). All documents submitted, including the application itself, should be translated into Russian and should be consularized at the USSR Embassy in the jurisdiction in which the foreign company is organized. In addition, if the foreign firm is required by the laws of its jurisdiction of incorporation to obtain any governmental approvals in order to establish a representative office, a consularized copy of such document should be attached.

The accrediting body has the right to ask for additional information and documentation in support of the application. Generally, the applicant is required to submit a power of attorney authorizing a named individual to handle questions and other matters that may arise during the accreditation procedure, as well as a letter from a bank or other financial institution verifying the applicant's creditworthiness.

### **VIII. Grant of Accredited Status**

Section 7 of the New Regulations, which describes the information that should be contained in the approval issued by the accrediting body, has not materially changed from the 1977 Regulations.<sup>54</sup> The approval must state the purpose of the representative office, the conditions attached to the grant of accreditation, the duration of the approval, and the number of employees of the representative office who are foreigners working for the foreign company. The representative office is considered opened as of the date the approval is issued; however, the approval expires if it is not acted on by the foreign firm within six months from its date of issuance.<sup>55</sup>

The New Regulations, like the 1977 Regulations, do not require the accrediting body to grant or deny accreditation within any particular time period after receipt of a properly submitted application. Indeed, the New Regulations do not require the accrediting body to respond to the application at all. The Trade Agreement, if ratified, would remedy this problem by requiring an accrediting

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54. 1977 Regulations, *supra* note 8, § 7.

55. New Regulations, *supra* note 7, § 9.

body to use its best efforts to issue its determination within sixty days after receipt of the application.<sup>56</sup>

Once a representative office is accredited, each of the foreign employees who will staff the office and their families must also be accredited through the same accrediting body.<sup>57</sup> The total number of employees so accredited may not exceed the number stipulated in the approval granted to the representative office.<sup>58</sup>

## IX. Infrastructure for the Office

The 1977 Regulations appointed the Service Administration for the Diplomatic Corps (known by its Russian acronym, UPRK) as the agency through which all representative offices obtained office and residential space, telephone, telex, and other utilities, as well as Soviet employees to perform specialized engineering and other technical and related jobs and employees to perform more routine office and domestic work, such as secretaries, cooks, drivers, and housekeepers.<sup>59</sup> With respect to Soviet employees, the foreign representative office was required to pay UPRK in foreign exchange, and the employees (who, for legal purposes, were essentially seconded to the representative office by UPRK) received rubles from UPRK.

The New Regulations preserve these requirements, but end UPRK's monopoly over the provision of services to representative offices. Those offices established in Moscow will still be served by UPRK and, in addition, by the Chamber of Commerce.<sup>60</sup> In practice, a representative office may choose to use the services of either organization. For representative offices established outside of Moscow, the services specified above are provided by the executive committee of the relevant municipal council of people's deputies along with the appropriate affiliate of the Chamber of Commerce.<sup>61</sup> In adopting the New Regulations, the USSR Council of Ministers also authorized cooperatives (privately owned Soviet businesses generally in the service sector) to provide services to representative offices, subject to the approval of the appropriate authorities.<sup>62</sup> It is generally assumed that the permissible range of services which may be offered by cooperatives includes the provision of office and residential space.

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56. Trade Agreement, *supra* note 9, art. V, § 1.

57. New Regulations, *supra* note 7, § 12. Although this section makes no reference to the families of the foreign staff of the representative office, in practice they receive a stamp in their passports indicating that they are family members of an accredited representative.

58. *Id.*

59. 1977 Regulations, *supra* note 8, § 8.

60. New Regulations, *supra* note 7, § 8.

61. *Id.*

62. USSR Council of Ministers Decree No. 1074, dated Nov. 30, 1989, para. 2. In Moscow, arrangements with cooperatives must be approved by UPRK. In other cities, the approval of the executive committee of the relevant municipal council of people's deputies or the appropriate affiliate of the Chamber of Commerce is required.

By decentralizing the provision of services to foreign representative offices, the New Regulations represent a slight liberalization over the 1977 Regulations, but still retain an unnecessary degree of state involvement in the representative office's day-to-day affairs. To some extent, these restrictions have been eroded by the USSR Supreme Soviet's adoption in late 1989 and 1990 of laws on property,<sup>63</sup> land,<sup>64</sup> and leasehold,<sup>65</sup> which grant to foreign legal entities, subject to various conditions, the rights to own buildings and enterprises and to be the direct lessee of land and buildings in the USSR. However, the interplay of these new laws with the New Regulations is unclear and has created considerable confusion for Western companies and their Soviet counterparts. To compound this confusion, in several instances the Moscow City Council has provided services to foreign representative offices, including office and housing space, without deeming it necessary to go through UPDK, as required in the New Regulations.

To date, the biggest problem faced by UPDK and the Chamber of Commerce has been providing office space and accommodation in Moscow.<sup>66</sup> The shortage of both is so great that waiting lists are now over a year long. As a result, it is not uncommon for a foreign representative office to operate its business in Moscow from the hotel rooms of its foreign staff while awaiting an allocation of office space. In terms of housing, the foreign staff usually have no acceptable alternative to the few hotels in Moscow that meet Western standards (and charge in the range of U.S. \$150–\$200 per day). The office space and housing situation is likely to be even more critical in other Soviet cities, where little or no infrastructure exists to support foreign trade.

Once a foreign company has secured space for its representative office, it is faced with other logistical problems. Direct communications between the USSR and foreign countries in any form other than telex are difficult and unreliable due to the antiquated and poor quality Soviet telephone system. It is usually necessary to import all electronic office equipment, including fax machines, computers, word processors, photocopy machines, and telephones, as well as home appliances. In the past, long delays were common, chiefly as a result of problems in clearing such equipment through customs. The situation has recently improved

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63. "Law of the Union of Soviet Socialist Republics on Property in the USSR," The Official Gazette of the Congress of People's Deputies of the USSR and the Supreme Soviet of the USSR 1990, No. 11, art. 164.

64. "Principles of Legislation of the Union of Soviet Socialist Republics and Union Republics on Land," The Official Gazette of the Congress of People's Deputies of the USSR and the Supreme Soviet of the USSR 1990, No. 10, art. 129.

65. "Principles of Legislation of the Union of Soviet Socialist Republics on Leasehold," The Official Gazette of the Congress of People's Deputies of the USSR and the Supreme Soviet of the USSR 1990, No. 25, art. 481.

66. The effect of designating approved cooperatives as an additional source of office space and accommodation has yet to be felt in Moscow. Cooperatives must compete with all other players in the real estate market and are generally at a disadvantage vis-à-vis UPDK and other governmental entities. If offered space by a cooperative, a foreign company should take steps to assure itself that the cooperative is in fact authorized to engage in such activity and has the full and exclusive right to lease the space in question.



somewhat, in that customs restrictions have been relaxed and a few joint ventures offer expedited telephone and fax hookups. In addition, several communications companies are beginning to offer satellite links to bypass the Soviet phone system. Nonetheless, substantial improvement is still needed.

The Trade Agreement attempts to address many of these basic problems. The agreement expressly states that foreign representative offices are not entitled to the assistance of the host country's government in locating office and residential space.<sup>67</sup> By the same token, it requires both nations to permit on a nondiscriminatory basis and at nondiscriminatory prices (where such prices are government-controlled) access by foreign representative offices to office space and residential accommodations, whether or not designated for use by foreigners.<sup>68</sup> While these provisions would give American companies more flexibility in meeting their office and accommodation needs, they do not solve the practical problem posed by the simple lack of available space meeting Western standards.

The Trade Agreement also requires each nation to permit the import and use of office equipment in accordance with normal commercial practices.<sup>69</sup> With respect to staffing the office, the Trade Agreement would eliminate the role of UPDK and the Chamber of Commerce. Representative offices would be free to hire directly employees who are nationals of either country or third countries on mutually agreed terms, and to pay them in a mutually agreed currency.<sup>70</sup>

## X. Reporting Requirements

Section 13 of the New Regulations sets forth reporting requirements for representative offices. The head of the representative office is required to file reports with the accrediting body regarding the identity and number of its foreign employees and any changes in such personnel. The New Regulations, unlike the 1977 Regulations, do not require the filing of reports on each entry into and exit from the USSR by such employees.

Every six months the head of the representative office must file a written report with its accrediting body about the activities of the representative office. The report must contain whatever information the accrediting body designates. This provision is intended to reduce the paperwork burden imposed by the 1977 Regulations, under which reports had to be filed quarterly or at such other times specified by the relevant accrediting body.<sup>71</sup>

Within one month from the commencement of its activities, the representative office must notify the USSR Ministry of Finance of the location of the office, the identity of its foreign employees, and the fact that it has commenced business.

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67. Trade Agreement, *supra* note 9, art. V, § 1.

68. *Id.* § 4.

69. *Id.* art. V, § 3.

70. *Id.* art. V, § 5.

71. 1977 Regulations, *supra* note 8, § 13.

## XI. Termination of Accredited Status

Section 14 of the New Regulations sets forth the following events that result in termination of accredited status and, consequently, require the closing of the office:

- (a) upon the expiration of the approval of the accrediting body, unless a request for extension has been filed;<sup>72</sup>
- (b) upon the liquidation of the foreign firm;
- (c) if the representative office has been established pursuant to a treaty, upon the termination of the treaty, but only if this result is clearly contemplated by the treaty;
- (d) by decision of the relevant accrediting body, if any of the conditions set forth in its original approval are breached or if there is a violation of Soviet law;<sup>73</sup>
- (e) upon the decision of the foreign firm itself.

Upon termination, the representative office is required to cease all activities and to vacate all office and residential space within three months from the date of notice.<sup>74</sup>

## XII. Conclusion

By adopting the New Regulations and signing the Trade Agreement six months later, the Soviet Union has signalled its intent to discontinue past restrictive policies that made the opening of a foreign representative office an excessively time-consuming and frustrating process. The achievement of this goal may not proceed smoothly. The infamous Soviet bureaucracy is likely to cause delays and other problems regardless of government policy. Moreover, the chaotic changes currently underway in the political, social, and economic situation in the USSR, including the growing power struggles between the central government and the Republics over sovereignty and the supremacy of laws, raise the prospect of unpredictable changes in the laws and their sources. Despite these uncertainties, it appears that the Soviet Union sincerely desires to actively encourage the role of foreign companies in its economy, a radical departure from its past. As a track record develops during the coming months, it will become evident whether a real and substantial liberalization actually occurs.

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72. It is unclear whether this is intended to mean that the act of filing a request for extension automatically extends the approval until the accrediting body acts upon the request. The corresponding termination provisions of the 1977 Regulations contained no reference to extension requests.

73. Although the reference to a breach of Soviet law was not contained in the 1977 Regulations, its inclusion in the New Regulations is simply a restatement of the obvious and does not reflect a change in policy; it is hardly conceivable that, under the 1977 Regulations, the Soviet authorities would have considered themselves powerless to close a representative office that had violated Soviet law, merely because of the absence in the regulations of express authority to do so.

74. New Regulations, *supra* note 7, § 15.

## APPENDIX

### USSR Council of Ministers Decree\* “On Approval of the Statute on the Procedure for the Opening and Activity in the USSR of Representative Offices of Foreign Firms, Banks and Organizations”

The USSR Council of Ministers resolves:

1. To approve the attached Statute for the Opening and Activity in the USSR of Representative Offices of Foreign Firms, Banks and Organizations.

To establish that permission to open in the USSR representative offices of foreign firms, banks and organizations is granted by the competent USSR ministries and departments and Councils of Ministers of the Union Republics in strict compliance with the above-mentioned Statute.

2. To grant permission to cooperatives to provide services to diplomatic representations, representative offices of foreign firms, banks and organizations, as well as to other representations of foreign states and international organizations in Moscow only on the basis of agreements signed with the Main Production and Commercial Administration on Service to the Diplomatic Corps of the USSR Foreign Ministry [GlavUPDK]. The services to the above-mentioned representative offices in other USSR cities are provided by cooperatives on the basis of agreements signed with the appropriate administrations (departments and organizations) of the executive committees of city councils of people's deputies or appropriate organizations within the system of the USSR Chamber of Commerce and Industry.

3. To establish for 1989–1990 standards for executive committees of city councils of people's deputies permitting the retention of foreign currency by subordinate enterprises, amalgamations and organizations at a rate of 70 percent of the foreign currency received for the provision of administrative and living quarters, as well as everyday and other services, to the representative offices of foreign firms, banks and organizations.

To allow executive committees of city councils of people's deputies to collect up to 40 percent of the foreign currency retained by subordinate enterprises, amalgamations and organizations.

4. In connection with the present Statute:

(a) to deem void:

The USSR Council of Ministers Decree of May 23, 1977, No. 427 “On Approval of the Statute on the Procedure for the Opening and Activity in the

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\*Unofficial Translation prepared by Coudert Brothers.

USSR of Representative Offices of Foreign Firms, Banks and Organizations'' (Collection of Decrees of the USSR, 1977, No. 16, Article 95);

The USSR Council of Ministers Decree of January 7, 1987, No. 17 "On Supplementing the Statute on the Procedure for the Opening and Activity in the USSR of Representative Offices of Foreign Firms, Banks and Organizations'' (Collection of Decrees of the USSR, 1987, No. 7, Article 32).

Chairman  
of the USSR Council of Ministers  
N. Ryzhkov  
Director of Administration  
of the USSR Council of Ministers  
M. Shkabardnya

Moscow, Kremlin. November 30, 1989, No. 1074

CONFIRMED  
by Decree of the Council of  
Ministers of the USSR dated  
November 30, 1989, No. 1074

### STATUTE

On the Procedure for the Opening and Activity in the USSR of Representative Offices of Foreign Firms, Banks and Organizations.

1. Foreign firms, banks and organizations (hereinafter referred to as Foreign Firms) may open representative offices in the USSR only with special permission granted, depending on the nature of activity of a particular Foreign Firm, by the USSR Ministry for Foreign Economic Relations, the USSR State Committee for Science and Technology, the USSR Ministry of Civil Aviation, the USSR Ministry of Merchant Marine, the USSR Ministry of Fisheries, the USSR State Bank, the USSR Chamber of Commerce and Industry, the Councils of Ministers of the Union Republics or, at the instruction of such Councils of Ministers, by the republican ministries and departments of Union Republics (hereinafter referred to as Accrediting Bodies).

Accrediting Bodies likewise decide issues relating to the opening of branch offices of foreign representative offices established with their permission. Several Foreign Firms together can open one joint representative office.

2. Permission to open representative offices may be granted to Foreign Firms with which Soviet organizations are interested in cooperating, and first and foremost to:

—firms which are well-known in their home countries and in the international market, have proved themselves good partners in cooperation with Soviet organizations in different spheres, have signed with Soviet organizations

large-scale commercial agreements or other types of agreements which have a considerable impact on the Soviet economy, and have large commodity turnovers with their Soviet partners;

- firms involved in industrial cooperation with Soviet enterprises and organizations, as well as chambers of commerce, associations and unions of businessmen interested in developing trade and economic relations with the USSR; and
- firms which have signed significant agreements on scientific, technical and other kinds of cooperation with appropriate Soviet organizations.

Permission may also be granted on the basis of intergovernmental agreements signed by the USSR with foreign states.

3. Representative offices of Foreign Firms may be opened for the purpose of:

- actively facilitating the realization of agreements on cooperation in the fields of trade, the economy, finance, science and technology, transportation, tourism and other spheres, investigating possibilities for further developing, intensifying and improving different forms of such cooperation, as well as expanding the exchange of economic, commercial and scientific and technological information and developing trade and economic relations with Soviet organizations;
- fulfilling commercial and other kinds of transactions, as well as actively assisting Soviet organizations in developing the export of machinery, equipment and other goods and services, assisting Soviet organizations in getting to know the latest achievements in international technology, and promoting importation by Soviet organizations of modern machinery and equipment and assisting in their upkeep and maintenance.

4. Representative offices of Foreign Firms are established for a period necessary to achieve the goals indicated in point 3 of this Statute, but, as a rule, not exceeding three years, with the possibility of subsequent extension of this period, provided that the Foreign Firm in question files a timely application to the Accrediting Body, and provided that the goals of a particular foreign representation have not been completely achieved and such extension is deemed appropriate.

5. A Foreign Firm interested in establishing a representative office in the Soviet Union shall file a written application to the appropriate Accrediting Body. This application is to state the purpose of a representative office, and is to include a description of the Foreign Firm's activities and detailed information on business cooperation with Soviet organizations, including a description of existing agreements and commercial transactions, stating the purpose of the transaction, the sums and the duration of each agreement or transaction which the representative office is intended to promote. The application is also to state the prospects for development of cooperation.

The following official documents are to be attached to the application: the statute (bylaws; certificate of incorporation) of the Foreign Firm, an extract from the commercial register, and, in the case of a bank, an extract from the bank

register or other document confirming permission to engage in bank activities and the like. All the above documents are to be presented in official copies, duly notarized by the USSR consular divisions abroad and translated into Russian (including the application). In case the law of the country of location of a Foreign Firm requires special permission from governmental authorities for the opening of representative offices, a duly certified copy of such permission shall also be attached to the application.

In addition to the above-mentioned information and documents, at the request of the appropriate Accrediting Body, a Foreign Firm is to present other information and documents concerning its activities, such as information on its authorized fund, a letter of recommendation from its bank, etc.

Before receiving permission to open its representative office or extend the term of its operations in the USSR, the Foreign Firm is to pay duty in accordance with USSR legislation.

6. The representative of the Foreign Firm who conducts negotiations on the opening of its representative office in the USSR is to present a duly authorized power of attorney to the appropriate Accrediting Body.

7. Permission to open a Foreign Firm's representative office, which may be granted by an Accrediting Body in a form to be determined by such Body, shall state the following:

- (a) the object of the representative office;
- (b) the conditions on which the Foreign Firm is granted permission to open its representative office;
- (c) the duration of the permission; and
- (d) the number of foreign employees of the representative office.

8. The provision of Foreign Firms' representative offices with office space and living quarters, as well as telephone, telex and other everyday services is carried out in Moscow by the Main Production and Commercial Administration on Service to the Diplomatic Corps of the USSR Foreign Ministry (GlavUPDK), as well as the USSR Chamber of Commerce and Industry, and, in other Soviet cities, by the respective executive committees of the Councils of People's Deputies and other appropriate organizations which are part of the system of the USSR Chamber of Commerce and Industry.

The arrangement of employment of Soviet citizens at Foreign Firms' representative offices in Moscow is the responsibility of GlavUPDK, and, in other cities, is the responsibility of the respective executive committees of the Councils of People's Deputies.

9. A Foreign Firm's representative office is considered opened in the USSR on the date when the permission for its opening is granted.

The permission becomes void if, six months after its granting, the Foreign Firm does not take advantage of the right to open a representative office.

10. A Foreign Firm's representative office acts for and on behalf of the firm or firms which it represents (whose names are indicated on the permission to open

the representative office) and is to carry out its activities in compliance with Soviet law.

In addition, a Foreign Firm's representative office may carry out representational services for other foreign firms in the USSR, with the permission of the Accrediting Body granting permission to open the representative office. The representative office is to duly inform the USSR Ministry of Finance on the financial results of such representational activities in the prescribed order.

11. The head of the representative office acts on the basis of a duly authorized power of attorney from a Foreign Firm.

12. Employees of a representative office are accredited by the Accrediting Body which gave permission for the opening of the representative office, within the limits of the number of foreign employees allowed to be accredited.

13. The head of a Foreign Firm's representative office is required:

- to provide timely information to the appropriate Accrediting Body on the number and titles of the representative office's staff and any changes therein;
- to send a written report every six months on the activities of a representative office to the appropriate Accrediting Body. A list of information to be included in such a report is established by the Accrediting Body;
- within one month following the commencement of activities of the representative office, to inform the USSR Ministry of Finance about this fact as well as the location of the representative office and about the number and titles of its foreign staff.

14. The activities of a Foreign Firm's representative office in the USSR shall be terminated in the following cases:

- (a) if the duration of the permission has elapsed and the Foreign Firm has not applied for an extension of the term of its activities;
- (b) if a Foreign Firm having a representative office in the USSR is liquidated;
- (c) if an intergovernmental agreement between the USSR and a foreign state which provided the basis for the opening of the representative office is terminated, provided such termination is called for in the provisions of such agreement;
- (d) by decision of the Accrediting Body, in the event a representative office violates the conditions on which it was allowed to open and start its operations or in the event of a breach of Soviet law; and
- (e) by decision of the Foreign Firm which opened the representative office.

15. In all cases provided for in point 14 of this Statute, the appropriate Accrediting Body or Foreign Firm is to inform the other party about the decision to terminate.

The representative office of a Foreign Firm is to cease its activities in the USSR and vacate its office space and living quarters within three months following the date of the termination notice.

